IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8058 of 1990
with
SPECIAL CIVIL APPLICATION NO. 8536 OF 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT HOUSING BOARD

Versus

AMBALAL PUNJABHAI

Appearance:
MRS KETTY A MEHTA for Petitioner
MR RK SHAH for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 23/03/2001

ORAL JUDGEMENT

1. Gujarat Housing Board through Housing Commissioner-petitioner (Spl. C.A. 8058/1990) has filed this petition challenging the judgement and award of the Industrial Tribunal dated 30.4.1990 passed in Reference

(IT) No. 230 of 1980. The Labour Court by its impugned order directed that the concerned workman Ambalal Punjabhai who is employed by the Gujarat Housing Board, Ahmedabad, as muster-roll (daily rated) workman be made permanent with effect from 1.3.1975 as he had completed service for more than 240 days under the said Board prior to that date. It is further directed that the concerned workman be given all the benefits which are enjoyed by other permanent workmen employed by the said Board with effect from 1.9.1977 as prayed for. For coming to that conclusion, the Labour Court has considered the previous award passed by the Labour Court in the case of Gujarat Housing Board, Ahmedabad Vs. Workman in Ref. (I.T.) No. 31 of 1972 dated 3.8.1976.

2. The facts giving rise to this petition are as under:

2.1 The respondent Shri Ambalal Punjabhai was employed as daily rated labourer-cum-watchman by the petitioner Gujarat Housing Board. The industrial dispute between the petitioner and the workman was referred for adjudication to the Industrial Tribunal, Ahmedabad, under Section 10(1) of the Industrial Disputes Act, 1947 by the Commissioner of Labour, Gujarat State, Ahmedabad. In the said industrial dispute, a demand was made for making respondent workman permanent with effect from 1.3.1973 and to give all the benefits to him which are available to the permanent workmen of the Board. The contention of the workman was that he was doing the work of daily rated labourer-cum-watchman since the year 1970 and as per the award made in Reference (IT) No. 31 of 1972, by the Industrial Tribunal, Ahmedabad, he is entitled to become permanent and get all the benefits which are available to such permanent workmen of the Board. He claimed that as per the award made in Reference (IT) No. 31 of 1972, he is entitled to become permanent employee with effect from 1.3.1975 and also entitled to all the permanency benefits.

2.2 On behalf of the Gujarat Housing Board petitioner it was pointed out that the concerned workman was not a watchman-cum-labourer as designed in the Muster Roll of daily rated employees of the Board since 1970 and that he was never employed as Watchman-cum-Labourer. The Board also denied that he worked for the required number of days i.e. 267 days in the year 1972-73. It was also pointed out on behalf of the Board that initially for sometimes the respondent had worked as watchman in Division II in the years 1972 to 1976. Since 1977, he was working as a labourer in Division I. The Board

further pointed out that since 1977 is is paid salary as a daily rated labourer and was given the same pay as other daily rated labourers. The learned counsel for the petitioner has invited my attention to the earlier award passed by the Tribunal in Reference (IT) No. 31 of 1972. In that award, she has invited my attention to the following aspects:

"(1) Muster-roll (daily rated) employees who have completed 240 days of service should be made permanent and they should be given wage scales and all other benefits given to the permanent employees.

(2) Work charged employees are not given the benefits of the Provident Fund Scheme. The benefits of provisions of condition of service of Provident Fund Scheme made under Section 14 and 15 of the Gujarat Housing Board, should be extended to the employees.

Para 2 -In support of these two demands the workmen have filed their statement of claim exhibit 2 dated 3rd March, 1972. As regards the demand No. 1 it is stated that the Gujarat Housing Board which will hereinafter be referred to as `the Board' employs workmen who are designated as Muster Roll (daily rated) employees. The are paid daily wages and even though they have been working continuously for the last more than five years, yet they are designated as daily rated workmen. The result of they being designated as daily rated workers is that they are deprived of all other benefits which are available to permanent workmen. It is the case of the workmen that even these muster roll daily rated workers are doing the same type of work which is being done by other permanent workmen. The contention of the workmen, therefore, is that all those muster roll (daily rated) workmen who have completed 240 days of service should be made permanent and that they should also be given wage scale which are given to the permanent workmen along with other benefits enjoyed by them.

Para 3 - As regards the second demand it is the grievance of the workmen that the category of workmen known as work charged employees serving under the Board is not given the benefits of Provident Fund Scheme with the result that they

are not able to derive any such benefit. It is therefore urged that all the work charged employees should be given the benefit of the Provident Fund Scheme as are being given to certain other categories of workmen employed by the Board.

Para 6 - ... The Board in opening paragraphs of the said circular is to the following effect:

`In modification of this office circular No. Gen/29-CH-363-HC-A dated 9th June, 1976 following orders are issued.'

It has been decided by the Board that these Muster Roll (Daily rated) employees who complete 240 days of work in a year and whose number will not exceed 125 will be entitled to the following benefits.

Para 10 - (i) It is hereby directed that all the muster roll (daily rated) workmen employed by the Gujarat Housing Board, Ahmedabad, who are mentioned in the statement exhibit 5/3 should be made permanent with effect from 28th February, 1975 on which date they had completed the service of more than 240 days under the said. It is also directed that from the date of their permanency they should be given all the benefits which are enjoyed by the other permanent workmen employed by the Board."

2.3 The Industrial Tribunal by its judgement and order dated 30.4.1990 held that the respondent is employed by the Gujarat Housing Board as Muster Roll Workman and he should be made permanent with effect from 1.3.1975 as he had completed service of more than 240 days prior to that date. It was also submitted that he was covered by the award given in Reference (IT) No. 31 of 1972.

3. Being aggrieved and dissatisfied with the aforesaid order of the Industrial Tribunal dated 30.4.1990 the petitioner Board has filed the present petition before this court in September, 1990. The matter is admitted on 12.6.1991.

3.1 As regards Special Civil Application No. 8536 of 1988, Gujarat Housing Board has filed this petition against judgement and award dated 24.3.1988 passed in Reference (IT) No. 289/79. In that case the Tribunal

has held that as per the demand of second party, namely, the respondent herein who are employees who are temporary work charge or the employees who are muster roll workmen who have completed minimum 240 days, are to be given benefit as if they are permanent employees. The Tribunal further held that any temporary work charge division and muster roll work employees who have completed 240 days in one year, all those daily rated workmen are given all the benefits on the date they have completed 240 days. In this petition also the Tribunal has relied on the earlier Reference (IT) No. 31 of 1972. In the earlier award the Tribunal has given effect to 139 employees prior to 28.2.1975.

4. Ms. Ketty A. Mehta, learned advocate, for the petitioner has invited my attention to the award passed in Reference (IT) No. 31 of 1972 between Gujarat Housing Board, Ahmedabad and the Workmen employed therein. The award was passed on 3.8.1976. She pointed out that the award which is relevant for the purpose relates to demand of workmen i.e. Muster-roll (daily rated) employees who had completed 240 days of service should be made permanent and they should be given wage-scales and all other benefits given to the permanent employees. The learned counsel for the petitioner Board also pointed out that in the said award it was stated that those Muster-roll (daily rated) employees who had completed 240 days of work in a year and whose number will not exceed 125 will be entitled to certain benefits. According to her the workmen of the Gujarat Housing Board in different categories who have completed service of more than 240 days as on 28.2.1975 were entitled all the benefits in this behalf. She submitted that there were approximately 125 workmen when the matter started but ultimately from the record it appears that total 139 workmen were entitled to the said benefits. She submitted that the workmen who have completed 240 days as on 28.2.1975 were entitled to the same and no other employees in this behalf. She also relied on the Circular of the Board dated 7.6.1978 where the Board has also stated that the workmen who have completed 240 days prior to 28.2.1975 were entitled to the benefits. In view of the same, the Tribunal has directed that all the muster-roll (daily rated) workmen employed by the Gujarat Housing Board who are mentioned in the statement i.e. Circular dated 7.6.1978 along with exhibit 5/3 should be made permanent with effect from 28.2.1975 on which date they had completed the service of more than 240 days. She submitted that in view of the same, no other workmen who have not completed 240 days as on 28.2.1975 were entitled to the same benefits as permanent workmen.

4.1 In view of the same, she submitted that when the Tribunal in the present award has not properly appreciated the aforesaid award and when the Tribunal directed that Ambalal Punjabhai who was employed by the Board be made permanent with effect from 1.3.1975 as he has completed service of more than 240 days, the award of the Tribunal is illegal and liable to be set aside because Ambalal Punjabhai did not complete 240 days of service prior to 28.2.1975. She submitted that the respondent was not watchman-cum-labourer as designated in the muster roll (daily rated) employees and for some of the years the workman has not completed service of more than 240 days and he has also worked in various divisions of the Housing Board and therefore he is not entitled to the benefits of the award of the Tribunal.

4.2 In view of the same, she submitted that after passing of the said order it was pointed out that not 123 employees but 139 employees were covered by the said circular and ultimately, the benefits to 139 employees were given. However, the petitioner was not able to satisfy the said criteria of the said circular on that date and therefore the petitioner cannot be be allowed to be given the said benefit as per the award in this behalf.

5. On behalf of the respondent workman learned advocate Mr. Lakhia appeared. He has filed an affidavit in reply in support of the conclusion arrived at by the lower court. He has also given reasons in the affidavit for sustaining the award of the Tribunal. It was stated that as per the award in Ref. (IT) No. 31/72 the muster roll employees who have completed 240 days service are given regular wage scale and other allowances from 1977 while work charge employees are given regular wage scale and allowance from the date on which they join the service. It is further submitted that by Resolution dated 4.4.1990 the Board had decided to give pension to all its employees and it has been approved by the Government. It was stated that though the resolution speaks for all the employees the Board did not implement the resolution for the work charge and the muster roll employees and gave the benefit of the pension scheme to the permanent and temporary employees only from 1.4.1990. It is further submitted that in the affidavit that there are employees of the petitioner in muster roll establishment as well as in work charge establishment who are continuous in service since 1962 and there are other employees in muster roll establishment and work charge establishment who have put in minimum service of about 17

years or more but still the Board did not give benefit of House building advance benefit of higher pay scale and pension. Thus about 15% of employees who have put in more than 17 years of service are not given this benefit because the stay of the High Court is in operation against the award of the lower court.

6. Ms. Mehta learned advocate for the petitioner states that by this writ of certiorari the court may not look into the affidavit filed by the respondent in this behalf and the court must go to the reasoning given by the lower court. She has gone through the Reference (IT) No. 31 of 1972 and submitted that the employees who are in the Reference and the employees in the petition are differently situated and therefore the lower court has erred in giving benefits to the present employee as per the award of 31 of 1972. The lower court has misdirected itself and must apply the law in this behalf. Therefore, the finding of the lower court is bad in law.

7.1 In my view, the contention of the learned advocate for the petitioner required to be accepted because from the contents of the award which I have set out earlier the Tribunal has given effect only of the circular which was issued earlier which was in modification of the circular dated 9.6.1976 in which it has been decided by the Board that those Muster-Roll (daily rated) employees who complete 240 days of work in a year and whose number will not exceed 125 (139) will be entitled to the following benefits. In view of the same, if the employee does not fall within the said number of 139 then that employee cannot be given effect to the award of the Tribunal. In the present case, when the Tribunal has decided to grant benefit by its impugned order to the present workman the Tribunal has exercised jurisdiction not vested in it and the same is illegal and liable to be set aside. The Tribunal has not acted as per the circular of the Board and also the Tribunal has not properly interpreted earlier award of the Tribunal in Reference (IT) 31 of 1972. As per the earlier award the benefits of the award can be given only to 139 employees and none-else. To that extent the petition is allowed.

7.2 In my view, therefore, on the basis of the earlier circular and award the Tribunal cannot give benefits to other employees who had completed 240 days of work subsequent to 28.2.1975. In fact, the Board has prepared list of 139 workmen to whom the benefits shall be given. In view of the said award as well as the list, the Tribunal cannot confer benefits to other workmen.

7.3. In view of the same, the award dated 24.3.1988 giving benefits to all the work charged employees whose names are included in the muster roll and who have completed service of more than 240 days in one year, is liable to be quashed and set aside.

8. As regards Special Civil Application No. 8536 of 1988 is concerned, the Tribunal has given benefits only on the basis of the circular by which the Board decided that those Muster Roll (daily rated) employees who had completed 240 days of work in a year and whose number will not exceed 125 (139) will be entitled to the benefits to be given by the Board. In my view, except those 139 employees no other employees can be given benefit to the said circular as well as the award of the Tribunal.

9. In view of the same, the award dated 30.4.1990 (in Spl. C.A. No. 8058/1990) and the award dated 24.3.1988 (in Spl. C.A. No. 8536/1988) giving benefits to all the work charged employees whose names are included in the muster roll and who have completed service of more than 240 days in one year, are liable to be quashed and set aside. I accordingly set aside the same.

10. In view of the aforesaid discussion, the Special Civil Applications are allowed. No order as to costs.

(K.M. MEHTA, J)

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